

TO: House Business and Labor Committee members

FROM: Ann L. Moderie, Polson, Montana

SUBJECT: HB0450

DATE: February 13, 2013

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The following events regarding one of my clients are shared to assist in understanding the ramifications if HB0450 passes.

A 50 year-old gentleman was rear-ended while stopped at a light. The other driver was cited by the police. He was not at fault. He was treated at the local emergency room and advised to follow up with his treating physician, which he did. He was advised by his physician to get immediate surgery consultation for his neck and back injuries and was referred to a neurosurgeon. When he called to schedule an appointment, he was told he had to pay \$350 up front because this was an auto liability claim. The office also advised that they would not bill health insurance for these charges, even though he had health insurance through his employer.

Eight days after the accident the auto liability carrier for the driver who caused the accident wrote my client, advising him:

"[y]ou are responsible for your own medical treatment and bills that are incurred as a result of this loss. Any medical bills that are reasonably necessary and accident related will be taken into consideration at the time of your bodily injury settlement."

The neurosurgeon's office was called back and explained that the auto liability carrier was refusing to pay any of the accident-related bills until time of settlement and he did not have \$350 to pay. He again asked if the doctor would bill his health insurance. The office refused. He asked his treating physician to refer him to another surgeon who did not require \$350 up front and would be willing to bill his health insurance. The treating physician's office said they could not do so.

He was left with no choice but to seek legal assistance. He had not planned to pursue legal action. He just wanted to obtain the medical care he needed. He was experiencing severe pain in this neck and back and was losing feeling in one of his arms. He had daily headaches and difficulty sleeping. He has worked hard his whole life and carried insurance to protect him and his family. He did not understand why this was happening.

The auto liability carrier reversed its position after I wrote advising that its position

was in violation of Montana law. The auto carrier then agreed to pay the up-front cost so he could see the surgeon if statements were received from both the referring doctor and the surgeon. After receiving both requested statements and records, the auto carrier reversed its position again and refused to pay for the surgery consultation, noting that the client's x-rays showed some pre-existing spinal degeneration. He was prevented from receiving the medical care he needed, even though he had health insurance.

I then called an attorney who frequently represents that auto carrier in litigation. Within 24 hours, the auto liability carrier hand-delivered a check to the surgeon. The surgeon recommended surgery.


The auto liability carrier then said it would advance pay his medical expenses related to the accident. Over the next several months, at least 15 letters requesting payment of ongoing medical bills were sent to the auto liability carrier. The requested post-accident and pre-accident records were provided.

The carrier failed to pay many of the bills. My client received late notices, final notices, and was threatened with collection. When one of his doctors threatened to turn him over to collection if they did not receive payment within two weeks, he was left with no choice but to file suit against the auto carrier. A declaratory judgment action was filed requesting the court declare that the carrier was responsible for the ongoing medical expenses. Within days of sending the carrier a copy of the complaint, it paid all of the outstanding medical bills.

HB0450 assumes that auto insurance carriers (liability, uninsured, underinsured, etc.) will pay the bills as they should. As this situation shows, and which is not uncommon, carriers often fail to pay the accident-related bills timely, sometimes not at all. If the health insurance does not have to pay until the auto liability carrier does, this in effect, can leave the injured individual with no coverage, even though he pays monthly premiums for health insurance. An individual should have the right to use his health insurance he pays for year after year if he so chooses.

HB0450 does not appear fair. Doctors agree to charge a reduced rate for their services as part of their agreements with health insurance companies. Individuals and businesses purchase insurance to enjoy the benefit of paying those reduced fees for their medical bills. They pay monthly premiums relying on that benefit of insurance. But doctors want to charge a higher price for those same services if there is auto liability insurance involved. This results in less money going to the person who was hurt as amounts paid by the auto carrier for medical bills are subtracted from the amount paid at the end of the claim. This amount is more than he would have had to repay his health insurance if it had paid under its reduced rate. Someone who is hurt, through no fault of his own, should not be short-changed on the funds he will need for future care and to cover lost wages.

Thank you for your consideration.  
Dated this 13<sup>th</sup> day of February, 2013.

  
Ann L. Moderie

February 13, 2013

Honorable Members of the Montana Legislature:

My name is Tiffany Gouge and I live at 417 Slough Creek Drive in Bozeman, Montana. I am a Senior studying elementary education at Montana State University in Bozeman.

On April 4, 2011, a drunk driver with no driver's license, whose car was uninsured, crossed the center line at high speed and ran directly into the front of the pickup in which I was riding. The Highway Patrol estimated the drunk driver's speed exceeded 80 mph. The force of the impact pushed the pickup's engine into the driver's compartment. Both of my legs were fractured, my ankle pulverized. My spine was fractured in five (5) places. After stabilizing me and my spinal fractures, I was air flighted to Seattle for care of my legs. My spine was repaired with metal plates and bars and my fractured ankle was fused with metal rods. My medical bills exceeded \$475,000.

At the time of the wreck, I was employed in the medical office which did not provide medical insurance for me. Even though it was difficult for me to afford medical insurance, I purchased medical insurance on my own.

At first, the Bozeman hospital refused to submit my medical bills to my medical insurance company even though I had sacrificed to purchase medical insurance for an event like this. The hospital instead insisted that I assign to it the small amount of uninsured benefits available to compensate me for my injuries under the automobile policy of insurance paid for by my fiancé.

Fortunately, I was advised not to do so. The medical bills were eventually submitted to my medical insurance carrier which paid them without incident pursuant to its contract with me. I was able to use the uninsured benefits to cover other costs such as my lost wages as well as medical costs that were not covered by my medical insurance such as air ambulance to Seattle for emergency surgery.

I am told that the legislature is now considering a bill that would allow hospitals to do what it unsuccessfully tried to do to me. If that bill passes, it would have deprived me of any compensation for a lot of my injuries caused by a drunk driver. Even though my fiancé and I were students, we had done the responsible thing by purchasing medical insurance and insuring our vehicle against the hazards of uninsured drunk drivers. Why punish us or people like us by enacting this bill, which allows health insurers to avoid paying the benefits it agreed to pay under our contract?

As I understand it, the legislation now being proposed would deprive us of the contract benefits for which we paid, allowing the medical insurance company to not pay as it agreed to pay when it sold insurance. It would have deprived us of the small amount of compensation for the permanent disabilities caused by the drunk driver.

Please do not pass this very unfair legislation.

*Tiffany Gouge*

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### STATEMENT IN OPPOSITION TO HB 450

My name is Cheryl Raulston. I reside at 1315 Boulder Avenue in Helena, Montana. I am sorry I could not come to the hearing but I work full-time.

On July 19, 2011, I was stopped in a line of cars at a red light on Lyndale Avenue. I had my three children in the car. A young woman failed to stop behind me and ran into my car at twenty miles per hour according to the police report. She admitted that she had looked to north briefly and did not see my car.

She was insured by GEICO. My medical providers tendered bills to GEICO for payment but it did not make payment. In order to make sure my medical bills got paid so my children and I could continue with our medical treatment, I submitted the bills to my health insurance company. My health insurance company made the payments, but only after I had to pay my deductible and co-pays.

Finally, after GEICO had not paid for a long time, I had to hire a lawyer. Once I hired a lawyer, GEICO immediately started paying the bills.

If HB 450 is passed, I am afraid that other people like me will get denied by the car insurance company and their own health insurance company and they will end up not getting the medical care they need due to the carelessness of another person and even going to collections or worse.

My husband and I both work hard to provide for our family. We pay our premiums for our health insurance every month because we know that if something terrible happens, we are covered. There are a lot of other things we could do with that money but we choose to pay it to the health insurance company so we have that coverage.

This bill would make it easy for the health insurance company to not pay for medical expenses in a situation where a car insurance company is not doing its job. It seems to me that it is unfair to prioritize what insurer pays first and that would only result in the person injured in the car wreck, who had faithfully paid their premiums to the health insurance company, to be penalized.

Thank you for considering my perspective on this case.

 2-13-2013

Cheryl Raulston

Date

February 13, 2013

Barbara "Bobbi" Devereaux  
91 Pfeifer Road  
Bridger, MT 59014

Hello. My name is Bobbi Devereaux. I currently live at 91 Pfeifer Road, Bridger, Montana 59014. I wanted to attend this hearing in person but with the short notice and with all of my physical problems, I was not able to do that. I am hoping that my letter will show you how important it is to keep this bill from becoming law.

Two years ago my children and I were leaving a school function at West High in Billings. It was a Tuesday evening around 9:30 p.m. The light turned green and I pulled out into the intersection making a left hand turn. I do not know what happened next except from reports. A 70 year old driver ran a red light and smashed into my van. The man was drunk as well as high on drugs. The drunk and high man t-boned my van smashing in my door. My daughter and son were passengers in the front and back seats of the van.

The wreck was horrific and terrifying. All three of us had to be sent by ambulance to St. Vincent's Hospital for emergency treatment. My pelvis, left leg, and lower back were severely injured in the wreck. I was admitted to the hospital and had to have surgery. My initial stay at the hospital lasted almost a week. The hospital charges alone were **\$52,911**. Additionally the charges for outside doctors, radiologists and various medical team providers for that visit came to over another **\$11,000**. At the time I felt I was lucky to have health insurance through my place of employment.

In spite of all my treatment, my pelvis, legs and spine remain severely damaged from the wreck. I cannot walk normally. In order to get around I have to use a wheelchair although for extremely limited distances I am able to use crutches. When on crutches I drag my foot behind me like dead weight. The doctors cannot tell me how much more treatment I will need. They cannot tell me if I will ever recover.

My life for the past two years has included a series of doctors' visits, additional surgery, and discussion of even more medical care. During the time after that initial stay, I have incurred another **\$77,797** in additional medical costs. There is still no end in sight for my medical treatment.

The driver that hit me had a total of **\$30,000** of liability coverage. That's all. My life has been turned upside down by this wreck.

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Before the wreck I had worked at a job I loved as a dental hygienist. Immediately following the wreck it became apparent that I would not be able to return to the job. No one was willing to have a dental hygienist that cannot be on her feet, moving around a patient, and moving around to help the dentist. My employer had to let me go from my dream job. At the time I was earning a little over \$35 an hour and working 32 hours a week, i.e., around \$58,240 a year. I have not been able to work since the wreck. To date I have lost around \$99,680 and that amount is growing.

I had lost my job but with all of my medical problems I knew I had no choice but to keep my health insurance. Since the accident I now have "COBRA" coverage, for which I continue to pay over \$1200 every month. I pay that amount so I will have health insurance to pay the doctors and hospitals. I also had long term disability coverage that helped for a while but came no where near my previous earnings.

I thank the lord I had medical insurance. But those coverages, for which I paid considerable money, (and still do) did not cover the total medical bills. In spite of having medical insurance and long term disability, I am currently in collection and owe various medical providers over \$9,300 for expenses not covered. I receive calls from medical collection agencies almost daily. I have no answers for them. They continue to add penalties and interest to those medical charges growing the bills daily.

Before the wreck my husband and I owned a house in Billings. We had to give the home back to the bank because we could no longer afford it.

I had to buy a new vehicle to replace the one that the drunk driver totaled. I had to pay an additional \$8,500 out of my own pocket for the replacement vehicle. I had to purchase my own wheelchair as there was no insurance to cover it. That cost an additional \$5,000.

As I can no longer work, I am attending school to be re-trained into a job that can be done by a person who is confined to a wheelchair. I have no income and am now incurring even more expenses so that one day I can work again.

Recently I had to sign up for public assistance due to my circumstances. Each month we just get farther and farther behind.

But if you think I have received the \$30,000 from the insurance company I want you to know that I have received nothing to date.

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At first, the drunk driver's insurance company fought with me about who was at fault. I could not believe it. My son was a witness. There were drug tests and alcohol tests which he failed. Yet the company was fighting me. When they finally quit fighting, my health insurance company, as well as my long term disability company, sent letters to my attorneys saying any money that was paid to me by the drunk driver would have to be re-paid to the health care insurer and the disability insurer. The insurances are covered by ERISA. As I understand that term, that means they have a right to be reimbursed for any payment they made on my behalf that was a result of the wreck. Also, because I am now on Medicaid, I understand that the government will be looking to receive some of the money as well. The \$30,000 is being held by the drunk driver's insurance company because everyone is claiming it belongs to them.

At the time of the wreck I also had "underinsured coverage" but only in the amount of \$25,000. So there is a total of \$55,000 of car insurance in my case. Nothing else. The drunk driver has had problems his whole life and cannot pay for my injuries either.

At this time my attorney is fighting with the various insurance companies and medical providers in the hope that they will agree to allow me and my family to have the \$55,000 to cover all of the expenses that continue to add up. So far no one has budged. Without that money I may have file for bankruptcy.

Additionally my children also suffered physical injuries in the wreck. They were taken by ambulance to the hospital. My daughter's jaw was broken. Their bills came to around \$8,000 and my son only suffered from relatively minor injuries.

I could talk to all of you for days about how devastating this has been for me and my family. Simply put, we will never be the same. The things I am missing out on are one thing. But the things my children are missing out on, due to financial problems as well as my inability to participate fully in their lives, are devastating. I try to be positive but some days it just becomes overwhelming.

The bill you are considering would take the \$30,000 of liability coverage and the \$25,000 of my underinsured coverage - coverage I paid for to protect me and my family - and give it all to my medical providers. The medical providers agreed to take my insurance coverage and I paid for that coverage. They got paid. They have hired collections people to pursue me for the amounts my insurance hasn't paid. The only person who has not received any compensation has been me, the victim in this case. I did nothing wrong and I and my family are the ones who are suffering the consequences!

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I am grateful to my doctors, nurses, and all of those medical providers who have helped me. But I cannot imagine that they need the money more than I and my family do. At least they have received payment for their services in connection with this wreck. I and my family are the victims of this wreck and we have received nothing.

While the \$55,000 would not cover my losses, it would provide a lifeline for me and my family. I do not see how this bill is fair. As long as I carry health insurance the medical providers get paid the amount they agreed was fair. I do not understand why my misfortune should entitle them to be paid more than they agreed to simply because I was the victim of a high and drunk driver. If this legislation goes into law, not only would people like me be victims of careless drivers, we will be victims of this legislation. I am asking that you please, please consider the victims of these wrecks and do not pass this bill.

Thank you for your time.

Barbara Bobbi Devereaux  
Barbara "Bobbi" Devereaux